

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

NeighborFavor Inc.,

Plaintiff,

v.

Hey Favor, Inc.

Defendant.

Case No. 1:22-cv-00618-LY

**HEY FAVOR, INC.'S OPPOSED EMERGENCY MOTION FOR CONTINUANCE OF
HEARING**

Defendant Hey Favor, Inc. (“Hey Favor”) respectfully files this Emergency Motion for a Continuance of the hearing on Plaintiff’s Motion for Preliminary Injunction (Dkt. No. 6) and Motion to Dismiss Defendant’s Cancellation Counterclaims (Dkt. No. 20) currently set in this case for November 14, 2022 at 9:30 a.m. (Dkt. No. 25) for at least one week to allow one of Hey Favor’s key team members time to recover from COVID-19 and to end his CDC-recommended isolation. This emergency motion is supported by the concurrently-filed Declaration of Aaron Fountain.

Hey Favor submits that good cause exists to the continue the hearing date on these motions because one of its team members, Aaron Fountain, tested positive for COVID-19 today and is experiencing symptoms, and other members of Hey Favor’s team were exposed for a significant period less than two days prior to Mr. Fountain’s positive test. Emergency relief is appropriate because Mr. Fountain did not test for COVID-19 or receive his test results until this afternoon. Fountain Decl. ¶ 4. The current Centers for Disease Control (“CDC”) Guidelines recommend that individuals who have tested positive and are experiencing symptoms isolate for at least five days. *See* Centers for Disease Control and Prevention, Isolation and Precautions for People with

COVID-19, *available at* <https://www.cdc.gov/coronavirus/2019-ncov/your-health/isolation.html> (Last Updated Aug. 11, 2022).

As soon as Hey Favor's team received Mr. Fountain's results, they contacted the Court's Courtroom Deputy to inform the Court of the situation. Mr. Fountain and Ms. Liou also contacted counsel for Plaintiff, Travis Wimberly, to inform him and request Plaintiff's position on a joint request to continue the hearing. Plaintiff opposes this request.

Hey Favor would be significantly prejudiced if it must go forward with the hearing at 9:30 a.m. on Plaintiff's motions without Mr. Fountain, and potentially without additional members of its team throughout the day who have been exposed and are recommended to take precautions and isolate immediately upon developing symptoms under the CDC Guidelines. Mr. Fountain is lead local counsel for Hey Favor and has responsibility for examining two of the four witnesses set to be called at tomorrow's hearing. He has spent the last few days preparing for the hearing in the same room, including spending between 5 and 6 hours with two other members of Hey Favor's team, associate Matthew Stephens, the only other local counsel for Hey Favor, and paralegal Cody Gartman. Msrs. Stephens and Gartman were therefore exposed to COVID-19, but would be necessary attendees if the hearing goes forward. Joyce Liou remains the only member of Hey Favor's legal team who has not been exposed and in a position to attend the hearing. Hey Favor's chief executive officer, who is slated to be a witness, is also not comfortable with sitting in the courtroom in proximity to our exposed team members.

In the meantime, a brief continuance would not cause any prejudice to Plaintiff. In view of the foregoing concerns, Plaintiff's refusal to agree to Defendant's requested continuance is unreasonable. Plaintiff's complaint and request for preliminary injunction does not allege or assert that Plaintiff has lost any business to Defendant. Nor could it, as the parties operate completely

different businesses that do not compete. Plaintiff is an on demand local delivery service focused on food and groceries. Dkt. No. 6, at 1-2. Whereas Defendant is an online provider of women's health services, including appointments with nurse practitioners and prescriptions that are shipped by mail. Dkt. No. 16, at 1-2. Nor does Plaintiff make any specific allegation or assertion that it has suffered any damage to its reputations from Defendant's use of the mark in questions. Instead, Plaintiff's motion for a preliminary injunction depends heavily on the fact that a small number of Defendant's members have emailed Plaintiff's customer service representatives with questions about their accounts with Defendant. *See, e.g.*, Supp. Decl. of J. Bath, Ex. 3, Dkt. No. 28-1. These inquiries are quite easily redirected, and Plaintiff will suffer no appreciable harm if it receives a couple more emails while this hearing is rescheduled.

Good cause exists for continuing the November 14, 2022 hearing, and this request is not meant for improper delay of this proceeding. Accordingly, Defendant requests that the November 14, 2022 hearing be continued for at least one week to allow sufficient time for Mr. Fountain to end his isolation and for Defendant to prepare back-up arrangements should additional defense team members test positive for COVID. Alternatively, if the Court wishes to discuss scheduling options, Defendant requests that a conference be scheduled with the parties. Out of an abundance of caution, Defendant intends not to bring Mr. Fountain to the 9:30 a.m. hearing on November 14, 2022. In addition, Defendant intends not to bring its exposed team members to the beginning of the scheduled hearing, subject to further guidance from the Court.

Dated: November 13, 2022

Respectfully submitted,

By: /s/ Joyce Liou

Aaron G. Fountain (TX Bar No. 24050619)
Matthew R. Stephens (TX Bar No. 24129261)
MORRISON & FOERSTER LLP
701 Brazos Street, Suite 1100
Austin, TX 78701
Tel: (737) 309-0700
AFountain@mofo.com
MStephens@mofo.com

Joyce Liou (admitted *pro hac vice*)
MORRISON & FOERSTER LLP
425 Market Street
San Francisco, CA 94105
(415) 268-7000
JLiou@mofo.com

Ani Oganessian (admitted *pro hac vice*)
MORRISON & FOERSTER LLP
707 Wilshire Boulevard
Los Angeles, CA 90017
(213) 892-5200
AOganessian@mofo.com

Counsel for Defendant Hey Favor, Inc.

CERTIFICATE OF CONFERENCE

On November 13, 2022, counsel for Defendant Hey Favor, Inc. conferred with counsel for Plaintiff NeighborFavor, Inc., and Plaintiff indicated they are opposed to this motion.

Dated: November 13, 2022

By: /s/ Joyce Liou
Joyce Liou

CERTIFICATE OF SERVICE

I hereby certify that on November 13, 2022, the foregoing and all supporting materials were filed electronically in compliance with Local Rule CV-5(b)(1) and served via the Court's electronic filing system on all counsel who have consented to electronic service.

Dated: November 13, 2022

By: /s/ Joyce Liou
Joyce Liou